

Internal Revenue Service

memorandum

TL-N-2557-01

date: April 19, 2001

to: Internal Revenue Service, LMSB
Attn: Dave Yager, Team Manager, Team Coordinator NCE

from: Alice M. Harbutte, Attorney
LMSB Area 4, Natural Resources, Denver, Colorado

subject: [REDACTED]
Statute Extensions, Forms 872-P
Taxable Year: [REDACTED]

This memorandum is in response to your request for advice dated April 4, 2001, concerning the proper party to execute a statute extension, Form 872-P, with respect to the [REDACTED] U.S. Partnership Return of Income, Form 1065, filed by [REDACTED] ("[REDACTED]").

ISSUE

1. Whether the [REDACTED] ("[REDACTED]"), the partner designated as the tax matters partner ("TMP") of [REDACTED] on the [REDACTED] U.S. Partnership Return, Form 1065, is the proper party to execute the Consent to Extend the Time Within Which to Assess Tax Attributable to Items of a Partnership, Form 872-P, on behalf of [REDACTED] for the [REDACTED] taxable year.

CONCLUSION

1. Since [REDACTED], the TMP of [REDACTED], is a corporation and is a member of a consolidated group, the statute extension, Form 872-P, should be signed by [REDACTED] as the TMP of [REDACTED] and by [REDACTED], [REDACTED]'s parent.

FACTS

[REDACTED] ("[REDACTED]") is a joint venture ([REDACTED]/[REDACTED]) formed in [REDACTED] by two unrelated U.S. corporations, [REDACTED] ("[REDACTED]") and [REDACTED] ("[REDACTED]"). [REDACTED] filed a U.S. Partnership Return of Income, Form 1065, for the taxable year [REDACTED] ("[REDACTED] Form 1065"). The only partners of [REDACTED] are [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] properly elected to have [REDACTED] subject

to the TEFRA partnership provisions. On the [REDACTED] [REDACTED] Form 1065, [REDACTED] was designated as the tax matters partner for the [REDACTED] taxable year. The Service would like to obtain a consent to extend the statute of limitations from [REDACTED] for the [REDACTED] tax year. Your question is whether [REDACTED] is the proper party to execute the statute extension on behalf of the [REDACTED] partnership.

DISCUSSION

I.R.C. § 6229(a) generally provides that the period within which to assess any tax attributable to items of a partnership shall not expire before the date that is three years after the later of the date on which a partnership return is filed or the date on which a partnership return was due to be filed. This period may be extended by agreement pursuant to I.R.C. § 6229(b).

I.R.C. § 6229(b)(1)(B), provides that the 3-year period may be extended:

with respect to all partners, by an agreement entered into by the Secretary and the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement), before the expiration of such period.

The "tax matters partner" of a partnership is defined by a series of rules set forth in I.R.C. § 6231(a)(7). In the first instance, the partnership could designate a general partner to be TMP, "as provided in regulations." I.R.C. § 6231(a)(7)(A). [REDACTED] properly designated [REDACTED] as the tax matters for the [REDACTED] taxable year by making this designation on the [REDACTED] [REDACTED] Form 1065, in the section entitled "Designation of Tax Matters Partner." Thus, [REDACTED] as TMP of [REDACTED] is the proper party to execute a statute extension on behalf of the partnership. I.R.C. §§ 6229(b)(1)(B) and 6231(a)(7).

We therefore recommend that the statute extension, Form 872-P, for [REDACTED]'s [REDACTED] tax year be executed by a duly authorized officer of [REDACTED] as the tax matters partner of [REDACTED]. Your memorandum states that [REDACTED] has changed its name to [REDACTED] ("[REDACTED]") and that [REDACTED] was not liquidated or dissolved.

As a result, we recommend that the signature line of the Form 872-P, with respect to the signature of the TMP, read as follows:

████████████████████
formerly known as

████████████████████ *
THE TAX MATTERS PARTNER OF:
████████████████████

BY: _____
(a duly authorized officer of █████)

Put an asterisk after the █████ line and at the bottom of the Form 872-P, type:

*For the taxable year ending December 31, █████, █████ was a member of the █████ consolidated group. █████ was designated the TMP of █████ on the █████ partnership return. █████ has since changed its name to █████
████████████████████

█████ is a corporation and is a wholly owned subsidiary of █████ which is a wholly owned subsidiary of █████ ("████"). During █████ filed its return as part of a the █████ consolidated group. In addition to securing the signature of █████, the TMP, we recommend that you have █████ execute this partnership statute extension as well. See Treas. Reg. 1.1502-77.

For the █████ taxable year █████ filed its corporate return as part of a consolidated group for which █████ was the common parent. In █████, █████ merged with and into █████ ("████"), a Minnesota corporation. █████ merged out of existence, as shown in Exhibit A, Plan of Merger, which is attached hereto. After this merger, █████ changed its name to █████ ("████"). The taxpayer has represented that the merger of █████ and █████ was a reverse merger under Treas. Reg. § 1.1502-75(d)(3). In advice provided to you on February 5, 2001, this office advised you that the proper party to execute a statute extension on behalf of the █████ group was the new common parent of that group █████. In our earlier advice we stated that █████, was the only entity that could execute a consent on behalf of █████.

While [REDACTED] as TMP can bind the other partners of [REDACTED], it is not 100% certain that the signature of [REDACTED] as the TMP of [REDACTED] would be sufficient to bind the [REDACTED] consolidated group (the group which [REDACTED] is a member of). Therefore, we recommend that [REDACTED] also execute the partnership statute extension in question, Form 872-P.

We recommend that the name of the signature line with respect to [REDACTED] read as follows:

[REDACTED] (EIN: [REDACTED]), formerly [REDACTED], as successor to [REDACTED] (EIN: [REDACTED]), and as common parent of the [REDACTED] consolidated group.*

Put an asterisk after "group." This asterisk will refer to the statement that is set forth above (on page 3) and should be at the bottom of the Form 872-P.

If you have any questions concerning this matter please call Attorney Alice M. Harbutte at (303) 844-3258.



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